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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,557	03/21/2005	Pascal Bruna	Q86514	6383
23373	7590	10/17/2007		
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			EXAMINER GANEY, STEVEN J	
			ART UNIT 3752	PAPER NUMBER
			MAIL DATE 10/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/528,557

Applicant(s)

BRUNA ET AL.

Examiner

Steven J. Ganey

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 12-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8, 9, 12-17, 19 and 20 is/are rejected.
- 7) ☒ Claim(s) 6, 7 and 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. Receipt is acknowledged of the amendment filed on July 19, 2007, which has been fully considered in this action.

Claim Objections

2. Claim 19 is objected to because of the following informalities: In claim 19, line 1, the word --lateral-- should be inserted before the word "actuator" in order to maintain proper antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4, 8, 12, 15-17, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Ward '667.

Ward '667 discloses a fluid spray device comprising all the featured elements of the instant invention, note specifically body 1; reservoir 90; spray means/mechanism/rod 34; actuator means/element comprising a lateral actuator element/pivot tab 15; opening means/opening device 24; receiver means/support/snap fastener 2/10/31; and lateral access means comprising a window 3. Note the reservoir is closed in a sealed manner by the opening.

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device 24 before the spray device is actuated for the first time and the opening device 24 also opens the reservoir as the fluid spray device is actuated.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3, 5, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ward '667.

Ward '667 discloses all the featured elements of the instant invention except for the two diametrically-opposite windows; the reservoir comprising first and second plugs; and the device being structured to be a nasal spray device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide two diametrically-opposite windows, since such a modification would merely be the duplication of parts and the apparatus of Ward '667 would work equally as well with one window or two diametrically-opposite windows, the additional window further facilitating the insertion of the reservoir.

As to claim 5, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a reservoir having a first and second plugs with the fluid being disposed between the two plugs, since such reservoirs are well known in the capsule/cartridge art and the apparatus of Ward '667 would perform equally as well with the one plug 110 as shown or with two plugs having the fluid being disposed between the two plugs.

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As to claims 13 and 14, it would have been obvious to one having ordinary skill in the art at the time the invention was made to structure the device of Ward '667 to be a nasal spray device since the device would be capable of dispensing a dose of fluid into a nasal cavity by turning the device sideways and placing the discharge orifice 20 adjacent the nasal cavity.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ward '667 in view of Fuchs et al.

Ward '667 discloses all the featured elements of the instant invention except for the lateral access means including a removable cover. Fuchs et al shows a fluid spray device having a removable cover 66. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a removable cover as part of the lateral access means of Ward '667, as taught by Fuchs et al, since such a modification would protect the discharge orifice from contamination and protect the device from damage.

Allowable Subject Matter

8. Claims 6, 7 and 19 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

9. Applicant's arguments filed July 19, 2007 have been fully considered but they are not persuasive.

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Applicant argues that Ward '667 does not anticipate claims 1 and 12 since it is clear from claim 1 that "said reservoir 20 is closed in sealed manner before the spray device is actuated for the first time, the body including reservoir opening means 11 adapted to open said reservoir 20 while the device is being actuated", and not before actuation and since claim 12 recites, "the reservoir is separate from the body, filled with fluid, sealed prior to assembly in the body and remains sealed until the spray mechanism is actuated for a first time". Note that as claimed, Ward '667 maintains the reservoir closed in a sealed manner before the spray device is actuated for the first time by the reservoir opening means 24, which also is adapted to open the reservoir while the device is being actuated.

As to applicant's arguments concerning Fuchs et al, the examiner is only relying on Fuchs et al for the teaching of a removable cover for a spray device.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven J. Ganey whose telephone number is 571-272-4899. The examiner can normally be reached on 9:00-5:00; Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sjg
10/2/07



STEVEN J. GANEY
PRIMARY EXAMINER

10/2/07